Civil Misc. App. No.1062/2005
R.S.R.T.C. ***Versus Husain*** & Ors.

Date of Order ::: 07/08/06

Hon'ble Mr. Justice Ajay Rastogi

Mr. Virendra Agrawal for appellant
Mr. Anup Dhand for respondent (Claimant)

Instant appeal has been filed by the Corporation questioning Award dt.02/02/05 passed by Motor Accident Claims Tribunal, Sikar in MAC No.15/02 whereby compensation of Rs.3,87,000/- has been awarded to respondent claimants.

As alleged in claim petition, claimants are parents of deceased Akhtar Hussain aged 22 years who died in motor accident on 15/10/01 while he was travelling in roadways bus RJ23P-0474 from Deedwana to Sikar and was sitting on the roof top of offending bus. As per claim petition, deceased was earning Rs.5,000/- per month but learned Tribunal assessed Rs.3,000/- as his monthly income and after 1/3rd deduction considered Rs.2,000/- towards financial dependency to claimants and with the aid of multiplier of 15, computed loss of income as Rs.3.60 lacs and in all awarded compensation of Rs.3,87,000/- (including Rs.25,000/- towards love & affection and Rs.2,000/- for funeral expenses). Hence this appeal.

Counsel for appellant submits that indisputably, deceased was sitting on roof top of the offending bus; as such it was a case of contributory negligence and there was no occasion for him to sit on the roof top of the bus and learned Tribunal has not considered this aspect of contributory negligence of deceased while passing impugned Award. In support of his contention, Counsel has placed reliance upon

decision of this Court (DB) in ***RSRTC Vs. Shashi Kala Vyas*** (Civil Special Appeal No.53/96 decided on 12/12/02 at principal seat Jodhpur) where in a like situation deceased was travelling on the roof top of the bus, was considered to be a case of contributory negligence and accordingly this Court apportioned compensation to the ratio of 75:25 and in this view of matter, Counsel submits that looking to the fact that deceased was sitting on roof top of offending bus liability of appellant could not have been more than 75% towards compensation and to this extent, impugned Award requires interference.

Counsel for respondents on the other hand while not disputing the fact of deceased having travelled on the roof of offending bus, contends that merely because he was sitting on roof top of the bus, it cannot be said to be a case of contributory negligence and it was for conductor of the bus not to permit passengers to sit on the roof top and in such circumstances, learned Tribunal has not committed any error in awarding compensation impugned against the appellant.

I have considered contentions of Counsel for parties and with their assistance, examined material on record. This fact remained undisputed that deceased was sitting on the roof top of offending bus while it was being plied on Deedwana Sikar route and died on the spot at the time of accident in question. In ***RSRTC Vs. Shashi Kala Vyas*** (supra) this Court in an identical situation where deceased was sitting on roof top of the bus, considered it to be a case of contributory negligence and accordingly apportioned compensation in ratio

75:25 while observing as under : -

> "In totality of facts of the case, we are of the opinion that while primary negligence of the driver and conductor of the vehicle in issuing tickets far in excess of capacity is proved and it is also proved that passengers were made to sit on the roof as their inducement, at the same time it cannot be ignored that passengers who agrees to travel on roof accepts legitimate risk to be the victim of any accident for very many reasons and suffer injuries including the fall from the roof without there being any obstruction on the way therefore, total absence of contributory negligence cannot be accepted. We are in agreement with the learned Single Judge that statement of NAW1 and 2 in absence of any pleadings to that effect are not reliable to the extent they stated that the bus was stopped at some distant place and passengers were asked to get down. However, the degree of contributory negligence attributed to the passenger cannot be equal to the degree of negligence on the part of the driver and conductor in issuing excess tickets and then asking the passengers to travel on roof. Thus, we deem it just and proper to determine ratio of negligence on the part of the driver and conduct of vehicle vis-a-vis passengers on the roof as 75:25."

In the light of what has been observed above, this appeal is partly allowed and appellant Corporation is held liable only for 75% of total compensation awarded by learned Tribunal vide impugned Award dt.02/02/05, to which extent, it stands modified and rest of the Award is maintained. Stay order dt.06/05/05 stands vacated.

(Ajay Rastogi), J.

K.Khatri/1062CMA2005.